

May 24, 1999

6560 Rock Spring Drive  
Bethesda, MD 20817  
Telephone 301 214 3461  
Fax 301 214 7185

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

**RECEIVED**

MAY 24 1999

EX PARTE OR LATE FILED

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Ex Parte Notification  
Direct Access to the INTELSAT System  
IB Docket No. 98-122; File No. 60-SAT-ISP-92

Dear Ms. Salas:

The Commission's Notice of Proposed Rulemaking in the above-captioned proceeding (*Direct Access NPRM*), solicited comment on whether direct access to INTELSAT is needed "because U.S. users already can choose between alternative cable and satellite facilities" for the vast majority of INTELSAT telecommunications services offered by COMSAT. *Direct Access NPRM* at ¶55. After the pleading cycle in the proceeding was completed, the FCC issued its decision in *Policies and Rules for Alternative Incentive Based Regulation of Comsat Corporation*, IB Docket No. 98-60/FCC 99-17 (Feb. 9, 1999) (*Incentive Regulation Order*), which addresses the rates to be paid by U.S. users for INTELSAT services to "thin route" countries, where fewer alternatives exist. There, the Commission approved a plan that, *inter alia*, requires COMSAT to reduce its rates for switched-voice services to thin route countries by four percent annually through 2002. As the Commission stated:

"the four-percent reduction would reduce Comsat's rates in 'non-competitive' markets to rates below those presently charged by Comsat in 'competitive markets'... Further, if a subsequent 'competitive' market rate reduction produces a rate lower than that achieved by the annual four-percent reduction in 'switched-voice' 'non-competitive' markets, customers will be offered the lower 'competitive' rate."

*Id.* at ¶19. Lower, market-driven space segment rates to thin route countries is a stated goal of direct access, which the incentive regulation plan clearly effectuates. Whether U.S. carriers pass-through those COMSAT rate reductions to end users is another matter.

The *Incentive Regulation Order* also concluded that for private line services “we believe Comsat has a strong incentive to respond to competitive pressure on ‘thick routes’ *rather than to attempt to extract monopoly profits* on ‘thin route’ services.” *Id.* at ¶25 (emphasis added). That Commission finding, of course, completely negates the tentative conclusion in the *Direct Access NPRM* that Level 3 direct access is needed to “impede COMSAT’s ability to earn monopoly rents” in the non-competitive markets. *Direct Access NPRM* at ¶43. In short, the *Incentive Regulation Order* determined that COMSAT’s economic incentives now lie in the direction of rate reductions on thin routes due to the workings of the incentive regulation plan adopted by the Commission, thus obviating the need for Level 3 direct access to achieve the identical result.

Finally, to the extent that some parties claim that COMSAT’s exclusive access to the capacity it owns on the INTELSAT system should be eliminated to promote competition, COMSAT is submitting herewith revised market share calculations undertaken by The Brattle Group based on new FCC data recently released. These data demonstrate that COMSAT’s exclusive access to INTELSAT facilities now account for no more than a 15 percent average global market share of the transmission capacity utilized for switched-voice and private line services, and no more than a 25 percent average global market share of the transmission capacity utilized for video services. Even on the thin routes, COMSAT’s market shares have declined substantially. Again, this further proves that facilities-based competition to COMSAT is thriving, driving prices toward cost, and better serving consumers than would allowing INTELSAT (with its U.S. tax, antitrust, and regulatory immunities) to directly access the U.S. market and distort competition before it is privatized.

COMSAT respectfully requests that this new data be included in the record of this proceeding, along with this letter, as further support for COMSAT’s prior submissions.

Respectfully submitted,

A handwritten signature in cursive script, reading "Howard D. Polsky".

Howard D. Polsky

cc: Mr. Rod Porter  
Mr. James Ball  
Mr. Douglas Webbink  
FCC International Bureau

**MEMORANDUM**

**TO:** Howard Polsky, Comsat  
**FROM:** Johannes Pfeifenberger, The Brattle Group  
**SUBJ:** Update of Comsat Market Share Estimates  
**DATE:** April 26, 1999

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Comsat asked The Brattle Group to update its previous estimates of Comsat's market shares for facilities-based, international transmission services to and from the U.S. We find that the upper limit of *Comsat's market share in switched voice and private line services* declined from 28% and 21% for 1995/96 to *only 18% for year-end 1997*. Comsat's year-end 1998 *market share in switched voice and private line services* is expected to be *at or below 15%*. Our estimate of Comsat's market share in *video and audio services* declined from approximately 59% and 42% in 1995/96 to approximately 30% for year-end 1997 and, further, to *approximately 25% for year-end 1998*.

**SWITCHED VOICE AND PRIVATE LINE SERVICES**

We previously presented 1988-96 estimates of Comsat's market share for transmission capacity utilized for international switched voice and private line services in our analysis *Competition in Transoceanic Switched Voice and Private Line Services to and from the U.S.—1997 Update*. That analysis showed that Comsat's average global market share in switched voice and private line services had declined from 70% in 1988 to 21% in 1996. These results—as summarized in our study *The Economic Basis for Reclassification of Comsat as a Non-Dominant Common Carrier*—were confirmed by the Federal Communications Commission (FCC) in its Order reclassifying Comsat as a non-dominant carrier for the large majority of its services.<sup>1</sup>

These previous estimates were based on the FCC's 1995 circuit status data and AT&T's circuit status data for 1996. Due to the recent release of the FCC's 1997 circuit status data,

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<sup>1</sup>FCC 98-78, File No. 60-SAT-ISP-97 et al., rel. April 28, 1998 ("Comsat Non-dominance Order"). See ¶¶ 71-77.

we are now in a position to update our estimates of Comsat's switched voice and private line market share through year-end 1997.<sup>2</sup> The results of this update (presented in Table 1) show that *by year-end 1997, Comsat's market shares in switched voice and private line services to all international points*<sup>3</sup> already had declined to *approximately 18%*. Importantly, Comsat's market share also has further declined in each of the major geographic regions. On the two major telecommunications routes (trans-Atlantic to Europe and Middle East and trans-Pacific to Asia and Oceania)—accounting for over 80% of all telecommunications circuits to and from the U.S.—Comsat's market share is now in the 10% to 12% range.

<b>Table 1</b> <b>Comsat Market Shares in Switched Voice and Private Line Services to and from the U.S.</b>					
	1997 Market Size		Satellite Market Share <sup>4</sup>		
	1,000 circuits	% of total	1995	1996	1997
<b>All International Points</b> (excl. Canada & Mexico)	191.0	100	28.2%	20.5%	<b>18.3%</b>
<b>Individual Geographic Regions<sup>5</sup></b> (including thin-route countries in those regions)					
Europe and Middle East	98,6	51.6	18.0%	10.1%	<b>9.97%</b>
Asia-Pacific	57,8	30.3	27.1%	18.4%	<b>12.5%</b>
Carribean and Latin America	28,1	14.7	45.3%	45.0%	<b>42.8%</b>
Africa	3.5	1.83	87.3%	78.7%	<b>77.5%</b>

<sup>2</sup>FCC International Bureau, *1997 Section 43.82 Circuit Status Data*, rel. February 2, 1999. AT&T's circuit status data is no longer made available to the public.

<sup>3</sup>Excluding Canada and Mexico, but including all "thin-route" countries.

<sup>4</sup>The share of satellite circuits provides an upper limit to Comsat's market share. Because competing satellite operators provide switched voice and private line services to various international points, the "satellite market shares" presented in this table will overstate Comsat's actual market share. Data on the extent of service provided by competing satellite operators are not collected by the FCC and are not otherwise publicly available.

<sup>5</sup>The total for all international points includes 3,117 satellite circuits to "other" regions (such as maritime and Antarctica) in addition to the listed regions.

Comsat's 1988-98 market share in switched voice and private line services to and from the U.S. is summarized in Table 1a. Based on the trend in these satellite market share data and the continued growth of Comsat's satellite competitors in these markets, we expect that Comsat's 1998 market share in switched voice and private line services has decreased to 15 percent or less.

<b>Table 1a</b> <b>Comsat Market Shares in Switched Voice and Private Line Services</b> <b>to and from the U.S.</b>		
Year	Estimated Market Size (1000 Active Circuits)	Estimated Market Share
1988	43.8	69%
1989	55.9	52%
1990	59.6	48%
1991	67.7	40%
1992	69.7	39%
1993	73.2	34%
1994	78.2	31% <sup>6</sup>
1995	87.0	28%
1996	139.3	21%
1997	191.0	18%
1998	na	15% <sup>7</sup>

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<sup>6</sup>Interpolated from 1993 and 1995 data.

<sup>7</sup>Estimated based on likely 1997-98 trend.

## VIDEO AND AUDIO SERVICES

We previously presented 1993-1996 estimates of Comsat's market share in video and audio services in our analysis *Competition in the Market for Transoceanic Video Services to and from the U.S.* (October 24, 1996). This analysis showed that Comsat's market share in video and audio services had declined from 80 percent in 1993 to 42 percent in 1996. These results—as summarized in our study *The Economic Basis for Reclassification of Comsat as a Non-Dominant Common Carrier* (April 23, 1997)—were also accepted by the Federal Communications Commission (FCC) in its *Comsat Non-Dominance Order*.<sup>8</sup>

Estimating satellite service providers' market shares in video and audio services is a formidable task: none of Comsat's unregulated competitors makes sufficiently detailed video service data available to estimate traffic volumes to and from the U.S. In our 1996 study, we estimated necessary traffic volumes based on detailed modeling of each satellite competitors' satellite launches, satellite coverage areas, satellite capacity utilization, and company financial performance. The current update of our 1996 Video Study, however, avoids such very involved modeling.

We found in our 1996 Video Study that annual growth in the market for video and audio services to and from the U.S. accelerated from 12% in 1994 to 28% in 1996.<sup>9</sup> During the same period, Comsat's video and audio services had decreased from approximately 76 (full-time equivalent) transponder leases at the end of 1993, to an estimated 69 leases at the end of 1996. Based on recent data provided by Comsat, we find that Comsat's video business has declined even further despite a growing overall market. By year-end 1998, Comsat leased to its customers only approximately 51 full-time-equivalent video and audio transponders. Assuming an overall annual market growth of only 15% since year-end 1996, the total video and audio market expanded to approximately 215 full-time-equivalent transponder leases by year-end 1998. Based on these assumptions, we estimate *Comsat's 1998 market share in video and audio services to and from the U.S.* to be just below 25%

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<sup>8</sup>FCC 98-78, File No. 60-SAT-ISP-97 et al., rel. April 28, 1998. See ¶¶ 95-101.

<sup>9</sup>In 1994, total video (and audio) transponder leases grew 11.5% (from 94 to 105 full-time, 27/36-MHz equivalent satellite transponders); in 1995 transponder leases grew 21.4% (from 105 to 128 transponders); and in 1996 estimated leases grew 27.5% from 128 to 163 full-time-equivalent transponders.

—down from our previous estimate of 42% for 1996. Based on these trends, Comsat's 1997 video share was already below 30%. These results are summarized in Table 2 below.

<b>Table 2</b> <b>Comsat Market Shares in Video and Audio Services</b> <b>to and from the U.S.</b>		
<b>Year</b>	<b>Estimated Market Size</b> <b>(full-time-equivalent 27/36</b> <b>MHz transponder leases)</b>	<b>Estimated Comsat</b> <b>Market Share</b>
1993	94	80%
1994	105	75%
1995	127	59%
1996	163	42%
1997	187	27%
1998	215	24%